

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

	)	
In re	)	Chapter 11 Case
	)	
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590-DML
	)	Jointly Administered
Debtors.	)	
	)	

**MEMORANDUM ORDER CONSOLIDATING CERTAIN  
PROFESSIONAL FEE ORDERS**

On July 14 and 15, 2003, Mirant Corporation<sup>1</sup> (“Mirant”) and 74 of its subsidiaries<sup>2</sup> filed for relief under chapter 11 of title 11 of the United States Code.<sup>3</sup> Subsequently, nine other subsidiaries filed voluntary petitions for relief under chapter 11: Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd.<sup>4</sup> filed on August 18, 2003; Mirant Wrightsville Investments, Inc., Wrightsville Power Facility, L.L.C., Wrightsville Development Funding, L.L.C. and Mirant Wrightsville Management, Inc.<sup>5</sup> filed on October 3, 2003; and Mirant Americas Energy Capital, LP and Mirant Americas Energy Capital Assets, LLC<sup>6</sup> filed on November 17, 2003 (all such filers collectively the “Debtors”). Debtors’ cases are being jointly

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<sup>1</sup> Case No. 03-46590.

<sup>2</sup> Case Nos. 03-46588 and 03-46591 through 03-46663.

<sup>3</sup> 11 U.S.C. §§ 101 *et seq.* (the “Code”).

<sup>4</sup> Case Nos. 03-47927 and 03-47929, respectively.

<sup>5</sup> Case Nos. 03-49548, 03-49553, 03-49555 and 03-49556, respectively.

<sup>6</sup> Case No. 03-91079 and 03-91081, respectively.

administered and combine to form a “mega-case”<sup>7</sup> involving more than \$8 billion in total debt,<sup>8</sup> over \$19 billion in assets<sup>9</sup> and over 120 trade vendors.<sup>10</sup>

Debtors own and operate power generating plants throughout the United States and provide power on a wholesale basis in the United States and in other parts of the world. Debtors are also involved in purchase, sale and trading of various energy products. Debtors’ business is not only complex by reason of its size and corporate structure, it is also subject to regulation by national, regional and local governmental agencies, including those concerned with energy, the environment and labor conditions. On a regular basis, Debtors are required to retain outside firms to assist them in dealing with regulators, taxing authorities, industry groups, employee organizations and others. Consequently, Debtors have employed numerous counsel and other professionals.<sup>11</sup>

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<sup>7</sup> See *Mabey v. Southwestern Elec. Power Co. (In re Cajun Elec. Power Coop.)*, 150 F.3d 503, 506 (5<sup>th</sup> Cir. 1998), cert. denied, 526 U.S. 1144 (1999) (“The Cajun case is a mega-case with more than \$ 5 billion in debt and over seven hundred creditors.”); F COLLIER ON BANKRUPTCY App. Pt. 43-39 15th ed. rev. 2000. *citing* Departments of Commerce, Justice, and State, *The Judiciary and Related Agencies Appropriations Act-Conference Report*, 139 Cong. Rec. S 14073 (daily ed. October, 1993) (referring to “mega-filings” as those worth more than \$50 million and the most complex and difficult type of bankruptcy cases). With well over \$10 billion in assets this case would be within the top tier of categories in most, if not all, schemes based upon value of assets. See, for example, George M. Huyler and Francis G. Conrad, *A Critique Of The Bankruptcy Court Time Study*, 67 Am. Bankr. L.J. 49, 54 (1993) (setting the highest tier as those cases with assets worth \$10 billion and more).

<sup>8</sup> Affidavit of John W. Ragan in Support of Certain First Day Motions, ¶ 45.

<sup>9</sup> Ragan Affidavit at ¶ 15. The numbers given in the Ragan Affidavit have since been restated for accounting purposes.

<sup>10</sup> Ragan Affidavit at ¶ 81. There are also thousands of holders of Debtors’ publicly traded debt and dozens of institutional creditors. Mirant is publicly owned and, as of April 7, 2003, had 154,993 registered shareholders. List of Equity Security Holders Filed in Compliance with Federal Rules of Bankruptcy Procedure 1007(a)(3) (doc. #273).

<sup>11</sup> Pursuant to an order entered August 1, 2003, Debtors are also, subject to certain limitations, authorized to retain professionals in the ordinary course of business (the “Ordinary Course Professionals”). The Ordinary Course Professionals must file an affidavit with the court in accordance with Fed. R. Bankr. P. 2014, but Debtors do not need to apply under Rule 2014 to employ them. Ordinary Course Professionals also may be compensated by Debtors in the ordinary course of their business subject to certain limits.

Furthermore, three official committees have been appointed.<sup>12</sup> In order to perform the duties assigned by section 1103(c) of the Code, each committee has hired at least two law firms and has retained other professionals, including financial advisors.

Simply put, the size and nature of Debtors' case is such that the mechanisms for compensation of professionals ordinarily utilized in chapter 11 could lead to numerous problems. First, under Code sections 330 and 331 and FED. R. BANKR. P. 2016(a) each professional is expected to file applications in order to receive interim and final compensation. These applications are required to provide a thorough review of the work done by the professional. *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974); *In re First Colonial Corp. of Am.*, 544 F.2d 1291 (5th Cir. 1977), *cert. denied*, 431 U.S. 904, 97 S. Ct. 1696, 52 L. Ed. 2d 388 (1977); 3 COLLIER ON BANKRUPTCY ¶ 330.04 (15th ed. rev. 2003).

Applications for compensation are subject to court hearing. The court ultimately must independently review compensation of professionals.<sup>13</sup> *See In re Temple Retirement Community, Inc.*, 97 B.R. 333, 336 (Bankr. W.D. Tex. 1989); *In re Pettibone*, 74 B.R. 293, 308 (Bankr. N.D. Ill. 1987); *In re Liberal Market, Inc.*, 24 B.R. 653, 657 (Bankr. S.D. Ohio 1982). A professional is entitled to compensation for time spent preparing an application for compensation and participating in the hearing on the application. *See Smith v. Edwards & Hale, Ltd. (In re Smith)*, 305 F.3d 1078, 1087 (9th Cir. 2002) *citing In re Nucorp Energy, Inc.*, 764 F.2d 655, 660-61 (9th Cir. 1985); *see generally* 3 COLLIER ON BANKRUPTCY ¶ 330.04[5] (15th ed. rev. 2003).

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<sup>12</sup> An official unsecured creditors' committee and an official committee of equity securities holders have been appointed for Mirant and an official unsecured creditors' committee has been appointed for Mirant Americas Generation, LLC (Case No. 03-46592).

<sup>13</sup> The procedures here adopted by the court will preserve court review in that objections to interim compensation must be disposed of before payment and final applications for compensation will all be reviewed and heard by the court.

Moreover, other parties, including those represented by counsel who will be paid by the estate,<sup>14</sup> may object to an application for compensation.

The court is acutely aware of the adverse consequences that might result in this case from using the ordinary procedures for compensating professionals. The cost of the chapter 11 process could be significantly increased. Court – and professional – time required for addressing compensation issues could be excessive. Litigated disputes over fees could complicate progress toward Debtors’ reorganization.

Bankruptcy courts have broad authority and considerable discretion with regard to awarding attorney and other professional fees. *See, e.g.*, Bankruptcy Court, Northern District of Texas General Order 2000-6 (a complex chapter 11 case requires certain special procedures because of large size of case, large number of parties in interest in case, or claims against debtor or equity interests in debtor are publicly traded); Bankruptcy Court, Northern District of Texas Standing Order 2000-7 (order incorporating Guidelines for Compensation and Expense Reimbursement of Professionals); L.B.R. 2016.1 (bankruptcy court controls mechanics of compensation of professionals). Furthermore, section 105(a) of the Code provides that a bankruptcy court may issue any order necessary or appropriate to carry out the provisions of the Code.

Due to the complexity of these cases, the large number of professionals involved and the consequent importance of an efficient mechanism for dealing with compensation, the court has entered various orders regarding professional fees. On motion of the Debtors and consistent with local practice under General Order 2000-06, the court entered its *Administrative Order Establishing Procedures For Interim Compensation and Reimbursement of Chapter 11*

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<sup>14</sup> Even a party not ordinarily entitled to reimbursement for professional services may request payment of fees incurred in objecting to a fee application. 11 U.S.C. § 503(b)(3)(D) and (4).

*Professionals and Committee Members* (the “Fee Procedures Order”; attached hereto as exhibit “1”) on August 1, 2003; on its own motion, the court entered its *Memorandum Order Regarding Compensation of Professionals* (the “Compensation of Professionals Order”; attached hereto as exhibit “2”), on August 27, 2003; and on November 6, 2003, its *Order Regarding Compensation of Fee Expert and Fee Review Committee Chairperson Nancy B. Rapoport* (attached hereto as exhibit “3”) and its *Order Regarding Fee Review Committee Procedures and Standards* (“Procedures and Standards Order”; attached hereto as exhibit “4”).<sup>15</sup>

In its Compensation of Professionals Order, the court ordered established a committee to review fees in these cases (the “Fee Committee”) and appointed Dean Nancy B. Rapoport (“Rapoport”) of the University of Houston School of Law as the court’s expert on compensation matters (FED. R. EV. 706, applicable in bankruptcy cases pursuant to FED. R. BANKR. P. 9017) and as chairperson of the Fee Committee. The Fee Committee met on October 18, 2003 and recommended to the court a fee structure for Rapoport and operating procedures whereby the Fee Committee would review professional fees in these cases. In its Procedures and Standards Order, the court found the fee procedures recommended by the Fee Committee to be in the best interest of the Debtors and their estates and creditors and, subject to notice to the parties and a status conference to consider any objections to the procedures, the court adopted the Fee Committee’s procedures.

On November 25, 2003, the court held the status conference to address concerns parties raised regarding the Procedures and Standards Order, specifically, and the Professional Fee

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<sup>15</sup> Exhibits 1 through 4 shall be referred to collectively hereinafter as the “Professional Fee Orders.”

Orders, generally.<sup>16</sup> At the status conference, parties concerns were primarily focused on two areas: time requirements for filing statements and certification as to most favored client status.<sup>17</sup>

In part based on the proceedings then had, the court concludes it is appropriate to amend the Professional Fee Orders in certain respects and provide additional guidance to the Fee Committee and the Professionals<sup>18</sup> in these cases.

**ACCORDINGLY IT IS HEREBY**

**ORDERED** that the following shall supercede the second decretal paragraph of the Fee Procedures Order:<sup>19</sup>

**ORDERED** that except as may be provided in *any* separate order authorizing the retention of *a specific professional*, all Professionals shall seek compensation and reimbursement in accordance with the following procedures:

- (a) On or before the 25<sup>th</sup> day of each month following the month for which compensation is sought, *but in no event, absent Fee Committee approval, later than the date on which the Quarterly Compensation Summary is due, which is the 15<sup>th</sup> day of the second month following the end of the quarter*, each Professional (and Committee member, as defined below) *shall* serve a detailed statement of services rendered and expenses incurred during the prior month upon (i) the Debtors; (ii) the Debtors' counsel (*as designated to the Fee Committee*); (iii) the United States Trustee for the Northern District of Texas; (iv) counsel for any statutory committee appointed in these cases (*as designated to the Fee Committee*) (the "Committees" or a "Committee" and, (i) *though* (iv) collectively, the "Application Recipients"); (v) *each member of*

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<sup>16</sup> The court also ruled at the status conference that professional fees for the first quarter-year of the case could be paid prior to year-end as if approved for full payment, but that parties would reserve for the next quarterly review objections to those fees. To the extent an objection to any such fees in eventually sustained, the professional's total compensation will be adjusted accordingly.

<sup>17</sup> Although there were other questions raised, the Court does not consider it necessary to resolve them by court order.

<sup>18</sup> There are two categories of professionals required to submit interim and final fee applications: (1) separately retained chapter 11 professionals, and (2) those Ordinary Course Professionals whose fees and expenses exceed \$50,000 for a given month (collectively, the "Professionals," or each, a "Professional").

<sup>19</sup> Italics shall be used hereinafter to indicate a change or addition to a previously entered order.

*the Fee Committee, and (vi) Rapoport, who shall be provided two copies. Application Recipients shall have ten (10) days after the date of receipt thereof to review and raise objections, if any, to each statement. At the expiration of the ten (10) day objection period, Debtors shall promptly pay eighty percent (80%) of the fees and one hundred (100%) of the out-of-pocket expenses identified in each monthly statement, except such fees or expenses as to which an objection may be served by the Fee Committee or one of the Application Recipients as provided in sub-paragraph (b) below.*

- (b) In the event that one of the Application Recipients has an objection to the compensation or reimbursement sought in a particular monthly statement, such party shall, within ten (10) days after the receipt of the statement, serve upon (i) the Professional to whose statement an objection is made, (ii) the other Application Recipients, (iii) *each member of the Fee Committee, with (iv) two copies to Rapoport*, a written “Objection To Fee Statement,” with a statement setting forth the precise nature of the objection and the amount at issue. Thereafter, the objecting party and the Professional to whose statement an objection has been submitted shall attempt, *with such assistance as the Fee Committee may on its own or at the request of the parties offer*, to reach an agreement regarding the objection. *If the objection is not resolved, payment of the portion objected to shall be made as recommended by the Fee Committee, and both the objecting party and the Professional shall retain their respective rights to seek an adjudication of the objection by the court upon court consideration of the next application by that professional heard by the court; to the extent the objecting party maintains its objection, such objection, if filed with the court and served as required, shall be considered as provided in subparagraph (c)(ii) below.*
- (c) *Following the Fee Committee’s review of a Professional’s Quarterly Compensation Summary, to which Application Recipients shall have fifteen (15) days within which to file an objection, such Professional’s requested compensation shall be paid in the following manner: (i) if no member of the Fee Committee raises an objection to the Quarterly Compensation Summary and no objection has been made by any of the Application Recipients, Debtors shall immediately pay any unpaid fees and the out-of-pocket expenses identified in the Quarterly Compensation Summary; (ii) if a member of the Fee Committee does raise an objection to the Quarterly Compensation Summary and such objection is not otherwise resolved, or if a timely objection has been made by a Application Recipient, fees and expenses not subject to objection shall be paid immediately and*

*fees and expenses subject to objection shall be paid to the extent directed by the court after notice and a hearing; (iii) any fees or expenses paid in accordance with the foregoing procedures shall be subject to re-review only upon a sufficient showing as to why a prior objection was not made or, when appropriate, how the court erred in ruling on a prior objection to such fees or expenses.*

- (d) The pendency of an objection or a Court order stating that payment of compensation or reimbursement of expenses was improper as to a particular monthly statement shall not disqualify a Professional from the further payment of monthly compensation or reimbursement of expenses as set forth above, except as otherwise directed by an Order of this Court.
- (e) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall bind any party-in-interest or the Court with respect to the interim or final allowance of applications for compensation and reimbursement of Professionals.

And it is further

**ORDERED** that the following shall supercede the 6<sup>th</sup> decretal paragraph, found at the bottom of page 3, of the Fee Procedures Order:

**ORDERED** that, the Debtors shall serve notice of any hearing to consider fee applications to (i) the United States Trustee for the Northern District of Texas; (ii) counsel for the Committees appointed in these cases; (iii) Debtors' counsel; (iv) *the Fee Committee*; and (v) all parties requesting notice pursuant to Federal Rule of Bankruptcy Procedure 2002.

And it is further

**ORDERED** that the following shall supercede the 6<sup>th</sup> decretal paragraph, found at the bottom of page 2, of the Compensation of Professionals Order:

**ORDERED** that, *the Fee Committee is designated a party in interest pursuant to 11 U.S.C. § 1109 respecting all matters involving compensation of professionals.*

And it is further

**ORDERED** that the following shall supercede the 7<sup>th</sup> decretal paragraph, found at the top of page 3, of the Compensation of Professionals Order:

**ORDERED** that, in modification of the procedures described in the Fee Procedures Order, *on or before the 15<sup>th</sup> day of the second month following the end of the quarter*, each professional subject to the Fee Procedures Order seeking compensation in these cases shall submit to each member of the Fee Committee a *Quarterly Compensation Summary* containing certification of the relationship between rates regularly charged in these cases and rates charged to *any of such professional's (or such professional's firm's) clients in a bankruptcy case (other than a bankruptcy case where the economics of the case require otherwise) and other clients, generally, for comparable services* and a summary of time expended, costs incurred and tasks accomplished or addressed during the period for which compensation is sought; *provided however any format of Quarterly Compensation Summary satisfactory to the Fee Committee shall satisfy the requirements of this order.*

And it is further

**ORDERED** that the 8<sup>th</sup> decretal paragraph, found at the bottom of page 3, of the Compensation of Professionals Order is hereby deleted; and it is further

**ORDERED** that the following shall supercede the 11<sup>th</sup> decretal paragraph, found as the 3<sup>rd</sup> paragraph on page 4, of the Compensation of Professionals Order:

**ORDERED** that, upon completion of duties related to these cases, each professional seeking compensation shall *file with the court and provide to each member of the Fee Committee a final fee application as contemplated by 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, including a Compensation Summary* (each a “Final Compensation Summary”), which shall include a summary of time expended, costs incurred and tasks accomplished as a result of such professional's efforts during these cases (with appropriate time records to be made available at the Fee Committee's request).

And it is further

**ORDERED** that the following shall supercede the 12<sup>th</sup> decretal paragraph, found as the 4<sup>th</sup> paragraph on page 4, of the Compensation of Professionals Order:

**ORDERED** that, after review of each Final Compensation Summary, *and prior to hearing final fee applications*, the Fee Committee shall submit to the court a recommendation regarding final approval of such professional's compensation and, when warranted, the propriety of a fee enhancement.

And it is further

**ORDERED** that the following shall supercede the 1<sup>st</sup> decretal paragraph of the Procedures and Standards Order:

**ORDERED** that the proposed procedures and standards *stated under the heading “OPERATIONS”* be, and they hereby are, provisionally, and, subject to this order, finally approved.

And it is further

**ORDERED** that the following shall supercede paragraph numbers 7, 8, 9 and 10 under the heading “OPERATIONS” of exhibit “A” to the Procedures and Standards Order:

7. At least five days before each monthly meeting, the FRC will distribute *to its members* the spreadsheet with any issues flagged.

8. If the FRC has concerns about any rate, expense, or staffing issue, the FRC will first designate a member to raise the concern with the appropriate professional. If the FRC is not able to resolve the concern with the professional, the FRC will *so report to the court and the fees or expenses at issue will be treated as if objected to.*

9. The FRC shall file quarterly Advisory Reports with the Court, raising any issues it deems relevant. *To the extent any Advisory Report recommends compensation other than as requested by the professional, unless the professional waives payment of such compensation until hearing on its final fee application, the Court will consider the quarterly compensation at a hearing after notice to the professional and the FRC.*

10. The FRC *need* not opine on any other party in interest’s objection to a fee or expense, *but the chair, as the court’s expert shall, and any member to the FRC may, so opine.*

And it is further

**ORDERED** that any item provided to the court as a report by the Fee Committee shall be served on all persons entitled to receive objections to fees.

Signed this \_\_\_\_\_ day of January 2004.

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**DENNIS MICHAEL LYNN**  
**UNITED STATES BANKRUPTCY JUDGE**

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
FILED  
JAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

In re	)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590(DML)11
Debtors.	)	Jointly Administered

**ADMINISTRATIVE ORDER ESTABLISHING PROCEDURES FOR  
INTERIM COMPENSATION AND REIMBURSEMENT OF  
CHAPTER 11 PROFESSIONALS AND COMMITTEE MEMBERS**

Upon the Motion, dated July 14, 2003, (the "Motion"), of Mirant Corporation and its affiliated debtors (collectively, the "Debtors"), as debtors-in-possession, for entry of an administrative order establishing procedures for interim compensation and reimbursement of chapter 11 professionals and committee members (the "Motion"); and upon consideration of the Affidavit of John W. Ragan in Support of First Day Motions and Applications sworn to on the 14<sup>th</sup> day of July, 2003; and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of this Motion has been provided as set forth in the Motion and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interest of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause therefor, it is

**ORDERED** that, capitalized terms not otherwise defined herein should have the meanings ascribed to such terms in the Motion; and it is further

**ORDERED** that, except as may be otherwise provided in separate order authorizing the retention of specific professionals, all Professionals shall seek compensation and reimbursement in accordance with the following procedures:

- (a) On or before the 25<sup>th</sup> day of each month following the month for which compensation is sought, each Professional (and Committee member, as defined below) will serve a detailed statement of services rendered and expenses incurred during the prior month upon (i) the Debtors; (ii) the Debtors' counsel; (iii) the United States Trustee for the Northern District of Texas; (iv) counsel for the Debtors' postpetition lenders; and (v) counsel for any statutory committee appointed in these cases (the "Committee" and collectively, the "Application Recipients"). Each entity receiving a statement will have ten (10) days after the date of receipt to review and raise objections, if any, to each statement. At the expiration of the ten (10) day objection period, the Debtors shall promptly pay eighty percent (80%) of the fees and one hundred percent (100%) of the out-of-pocket expenses identified in each monthly statement, except such fees or expenses as to which an objection may be served by one of the Application Recipients as provided in subparagraph (b) below.
- (b) In the event that one of the Application Recipients has an objection to the compensation or reimbursement sought in a particular monthly statement, such party shall, within ten (10) days after the receipt of the statement, serve upon (i) the Professional to whose statement an objection is made and (ii) the other Application Recipients, a written "Objection To Fee Statement," with a statement setting forth the precise nature of the objection and the amount at issue. Thereafter, the objecting party and the Professional to whose statement an objection has been submitted shall attempt to reach an agreement regarding the correct payment to be made. If the parties are unable to reach an agreement on the objection within five (5) days after receipt of such objection, the Professional whose fee statement is subject to an objection shall have the option of (1) filing a request for payment of the disputed amount with the Court, or (2) foregoing payment of the disputed amount until the next interim fee application hearing, at which time the Court will consider and dispose of the objection if payment of the disputed amount is requested. The Debtors are required to pay promptly any portion of the fees and disbursements requested that are not disputed.
- (c) The pendency of an objection or a Court order stating that payment of compensation or reimbursement of expenses was improper as to a particular monthly statement shall not disqualify a Professional from the further payment of monthly compensation or reimbursement of expenses as set forth above, except as otherwise directed by an Order of this Court.

- (d) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall bind any party-in-interest or the Court with respect to the interim or final allowance of applications for compensation and reimbursement of Professionals;

and it is further

*Order*  
**ORDERED** that, the Court may establish additional procedures for ~~interim~~ review of professional fees.

**ORDERED** that, each member of any Committee is permitted to seek and receive reimbursement of expenses as follows:

Each committee member may submit statements of expenses and supporting vouchers to committee counsel, who shall collect and submit such requests for reimbursement to the Debtors in accordance with the foregoing procedure for monthly compensation and reimbursement of professionals, pursuant to 11 U.S.C. § 503(b)(3)(F); and it is further

*Order*  
**ORDERED** that, the Court may, in its discretion, award fee enhancements to any <sup>withholding the terms of engagement</sup> professional that contributes to the efficient and economical reorganization of the Debtors. <sup>approved by the court for any professional</sup>

**ORDERED** that, the Debtors shall serve notice of any hearing to consider fee applications to (i) the United States Trustee for the Northern District of Texas; (ii) counsel for the Debtors' postpetition lenders; (iii) counsel for the Committees appointed in these case; (iv) Debtors' counsel; and (v) all parties requesting notice pursuant to Federal Rule of Bankruptcy Procedure 2002; and it is further.

Dated: August 1, 2003

*Michael Lynn*  
HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES OF BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

U. S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
**ENTERED**  
TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

In re:

Mirant Corporation, et al.,

Debtors.

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Case No. 03-46590  
Jointly Administered  
Chapter 11

**MEMORANDUM ORDER REGARDING  
COMPENSATION OF PROFESSIONALS**

On July 14, 2003, Mirant Corporation ("Mirant") and its affiliated debtors (together with Mirant, the "Debtors") filed for relief under chapter 11 of title 11 of the United States Code.<sup>1</sup> On August 1, 2003, this court entered an administrative order establishing procedures for interim compensation and reimbursement of chapter 11 professionals and committee members (the "Fee Procedures Order"). In the Fee Procedures Order, the court indicated that it contemplated establishing additional procedures for reviewing professional fees and expenses.<sup>2</sup>

ACCORDINGLY, IT IS HEREBY

ORDERED that, pursuant to Fed. R. Bankr. P. 9017 and FRE 706, Dean Nancy B. Rapoport ("Rapoport") of the University of Houston School of Law be and is hereby appointed as this court's expert with respect to professional fees and expenses in these chapter 11 cases; and it is further

<sup>1</sup> 11 U.S.C. §§ 101 et seq. (the "Code").

<sup>2</sup> Given the size of Debtors' cases and the number of professionals likely to be employed, the court is concerned that, without the implementation of the procedures set forth herein, the court and possibly the office of the United States Trustee will be forced to spend inordinate amounts of time and resources reviewing fee applications (which time and resources would be better spent assisting Debtors in their efforts to reorganize their businesses).

ORDERED that Rapoport shall serve as chairperson of a fee review committee (the “Fee Committee”) to be henceforth formed; and it is further

ORDERED that the Fee Committee shall be comprised of Rapoport and representatives of the United States trustee (if the United States trustee so desires), Debtors, and each of the committees appointed in these cases pursuant to section 1102 of the Code (provided however that the committees’ representatives may not be professionals employed in these cases); and it is further

ORDERED that the Fee Committee recommend to the court the manner and amount of Rapoport’s compensation; and it is further

ORDERED that the Fee Committee shall establish its own procedures, provided however that the Fee Committee’s duties shall include meeting to review requested compensation, negotiating fee adjustments with professionals (when appropriate), making recommendations to the court regarding task-specific or final fee enhancements, establishing forms for professionals to follow in submitting summaries of requests for compensation (each a “Compensation Summary”) (as more fully described below), and monitoring compensation and performance of professionals not subject to court review under section 330 of the Code; and it is further

ORDERED that, in addition to complying with the Fee Procedures Order, each professional subject to the Fee Procedures Order seeking compensation in these cases shall submit to each member of the Fee Committee and any other person entitled to notice of interim fee applications under the Fee Procedures Order a copy of any monthly fee statement required by, and payment shall be made on account of such fee statements in accordance with, the Fee Procedures Order; and it is further

ORDERED that, in modification of the procedures described in the Fee Procedures Order, quarterly (or at such interval as the Fee Committee deems appropriate) each professional subject to the Fee Procedures Order seeking compensation in these cases shall submit to each member of the Fee Committee a Compensation Summary containing certification of the relationship between rates regularly charged in these cases and rates charged to such professional's (or such professional's firm's) most favored clients and a summary of time expended, costs incurred and tasks accomplished or addressed during the period for which compensation is sought; and it is further

ORDERED that, following the Fee Committee's review of a professional's Compensation Summary, such professional's requested compensation shall be paid in the following manner: (1) if no member of the Fee Committee raises an objection to the Compensation Summary, and no objection has been made as provided in the Fee Procedures Order, the requested compensation shall be paid immediately; (2) if a member of the Fee Committee does raise an objection to the Compensation Summary and such objection is not otherwise resolved, or if an objection has been made as provided in the Fee Procedures Order, fees and expenses not subject to objection shall be paid immediately and fees and expenses subject to objection shall be paid to the extent directed by the court after notice and a hearing; and (3) any fees or expenses paid in accordance with the foregoing procedures shall be subject to re-review only upon a sufficient showing as to why a prior objection was not made or, when appropriate, how the court erred in ruling on a prior objection to such fees or expenses; and it is further

ORDERED that, upon motion of the Fee Committee, with or without request by the affected professional, the court, after notice and, if requested in accordance with LBR 9007.1, hearing, may award a fee enhancement to any professional; and it is further

ORDERED that Rapoport may provide testimony to the court regarding the Fee Committee's position and testimony as an expert on compensation at any hearing on a Compensation Summary or any fee enhancement; and it is further

ORDERED that, upon completion of duties related to these cases, each professional seeking compensation shall provide to each member of the Fee Committee a final Compensation Summary (each a "Final Compensation Summary"), which shall include a summary of time expended, costs incurred and tasks accomplished as a result of such professional's efforts during these cases (with appropriate time records to be made available at the Fee Committee's request); and it is further

ORDERED that, after review of each Final Compensation Summary, the Fee Committee shall submit to the court a recommendation regarding final approval of such professional's compensation and, when warranted, the propriety of a fee enhancement; and it is further

ORDERED that the Fee Committee shall be dissolved upon any of: (1) the request of the United States trustee; (2) the recommendation of a simple majority of the

members of the Fee Committee; or (3) an order of the court upon motion or *sua sponte* after notice and a hearing; and it is further

ORDERED that Rapoport is a Protected Professional within the meaning of this court's August 6, 2003 order restricting pursuit of certain persons employed in these cases.

It is so ORDERED.

Signed this 27<sup>th</sup> day of August 2003.



D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES OF BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
**ENTERED**  
TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

In re: §  
§  
Mirant Corporation, et al., §  
§  
§ Case No. 03-46590  
§ Jointly Administered  
Debtors. § Chapter 11  
§

**ORDER REGARDING COMPENSATION OF FEE  
EXPERT AND FEE REVIEW COMMITTEE  
CHAIRPERSON NANCY B. RAPOPORT**

It appearing that the Fee Review Committee (the "FRC") has been formed as directed by this court's *Memorandum Order Regarding Compensation of Professionals* (the "Compensation Order") entered on August 27, 2003 for the purpose of supervising compensation of professionals employed pursuant to 11 U.S.C. §§ 327, 1103 and 1104; and it appearing that on October 18, 2003 the FRC met and established a proposed fee structure for Dean Nancy B. Rapoport ("Rapoport") of the University of Houston Law Center, who, by the Compensation Order, this court appointed as its expert with respect to professional fees and expenses in these chapter 11 cases and chairperson of the FRC; and it appearing to the court that the proposed fee structure is reasonable; it is

ORDERED that Mirant Corporation shall pay Rapoport \$15,000 per month, beginning with October 2003, plus actual expenses, including any quantifiable University of Houston Law Center staff time, travel expenses, and the like; and it is further

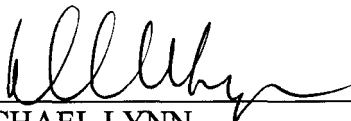
ORDERED that Mirant Corporation shall pay an additional \$1,000 per month to the University of Houston Law Foundation, *which is not a contribution but rather is interest* to cover any nonquantifiable expenses, which may include, but are not limited to, occasional faxes, copies, or telephone calls and use of

University of Houston Law Center facilities for meetings, incurred in connection with Rapoport's work on the FRC; and it is further

ORDERED that Mirant Corporation shall pay University of Houston Law Center students \$15 per hour for work done at the direction of Rapoport and the FRC; and it is further

ORDERED that Rapoport shall submit her statement monthly to Mirant Corporation.

Signed this 6<sup>th</sup> day of November 2003.

  
\_\_\_\_\_  
D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES OF BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
**ENTERED**  
TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

In re:

Mirant Corporation, et al.,

Debtors.

§  
§  
§  
§  
§  
§  
§  
§

Case No. 03-46590  
Jointly Administered  
Chapter 11

**ORDER REGARDING FEE REVIEW  
COMMITTEE PROCEDURES AND STANDARDS**

It appearing that the Debtors and the official committees in these chapter 11 cases have formed a Fee Review Committee (the "FRC") as directed by this court's order of August 27, 2003, for the purpose of supervising compensation of professionals employed pursuant to 11 U.S.C. §§ 327, 1103 and 1104; and it appearing that the FRC has met and established proposed procedures and compensation standards for carrying out its functions, a copy of the relevant part of the FRC minutes containing such procedures and standards being attached hereto as Exhibit A; and it appearing to the court that the proposed procedures and standards are appropriate; it is

ORDERED that the proposed procedures and standards be, and they hereby are, provisionally, and, subject to this order, finally approved; and it is further

ORDERED that within two business days of entry of this order the clerk of the court transmit by U.S. Mail, First Class, postage prepaid a copy of this order (including Exhibit "A") to every entity entitled to notice pursuant to FED. R. BANK. P. 2002(i); and it is further

ORDERED that any entity objecting to any of the proposed procedures and standards shall have until noon, Fort Worth time, November 18, 2003, to file such objection with the court, such objection to be served on all entities mailed a copy of this order, and the court shall consider any such objection at 10:30 a.m., November 19, 2003.

Signed this 16<sup>th</sup> day of November 2003.

  
\_\_\_\_\_  
D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

# **Mirant Fee Review Committee**

October 18, 2003

## **GOAL**

The goal of the Fee Review Committee (the "FRC") is to provide guidance and oversight of all professional fees and expenses in the bankruptcy case, such that the fees are reasonable in terms of efficiency and appropriate expertise. In order to achieve that goal, the FRC shall make recommendations to the Court in the form of Advisory Reports.

## **ASSUMPTIONS**

1. All parties should be made aware of the N.D. Texas local rules on fees and expenditures.
2. The U.S. Trustee's Office will audit the fees for such things as compliance with these local rules, so the FRC does not have to focus on that issue.
3. The FRC's primary mission is to focus on the "forest," not the "leaves on branches."
4. The more proactive the FRC is with respect to its expectations about fees and expenses, the less likely it is that any one professional will expend resources for fees or expenses that are unlikely to be approved.

## **OBSERVATIONS**

1. One of the best ways to keep fees and expenses reasonable and appropriate is to have every professional certify, in its monthly statements to the FRC, that (a) its hourly rates are no higher than those provided to its most favored clients (and on a per-office basis, not a homogenized basis), (b) its expenses conform to those expense parameters provided to its most favored clients, on a per-office basis (including such items as approved hotels, rules about meals and taxi use, secretarial & paralegal overtime, and billing for travel time); and (c) its staffing rules (how many attorneys – and the mix of partners and associates – should work on any given matter) should be no more expensive than those rules provided to its most favored clients, on a per-office basis.
2. Any variation from most-favored client parameters should be considered on a case-by-case basis by the FRC, preferably in advance of any new work done.
3. To enable easy verification of the most favored client parameters, professionals should attach to their next monthly statements certifications that (a) the hourly billing rates conform to most favored client status<sup>1</sup> (by office); and (b) the expenses conform to most favored client status (by office). In addition, professionals should attach to the next monthly statement a description of the staffing parameters provided to their most favored

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<sup>1</sup> "Most favored client" status should include any volume discounts or other pricing adjustments.

clients (by office). The FRC recommends that the Court alert all professionals to the “most favored client” requirements.

4. There should be a continuing duty to update any changes in hourly rates, expense parameters, staffing parameters, or other information that would affect monthly expenses.
5. The FRC will presume that rates, expenses, and staffing rules are reasonable if professionals are in compliance with most favored client status (by office).
6. Mirant will volunteer to help with travel bookings in order to make use of its negotiated rates with various companies, and the FRC will presume that any expenses incurred using Mirant’s travel agency are reasonable.

### **OPERATIONS**

1. The FRC will prepare a spreadsheet for use in summarizing the monthly statements.
2. Clerks hired by the FRC will input data into the spreadsheets. The clerks will report to the U.S. Trustee in terms of spreadsheet work, and the Chair will review the clerks’ monthly bills.
3. The clerks will review the bills and spreadsheets for any red flags on billing, including significant increases in hourly billing rates (e.g., increases from pre-petition rates to post-petition rates; increases greater than standard new-fiscal-year increases, etc.).
4. Monthly statements will go to all members of the FRC, with two statements to go to the Chair (one for her and one for the clerks to use).
5. For the quarterly summaries that all professionals will submit pursuant to court order, the statements should comply in substantial form with the following format:

#### QUARTERLY SUMMARY OF \_\_\_\_\_

Time expended per type of task/project (set forth separately for each professional, by rank, by hourly rate, and by office)	Expenses incurred in relation to task/project	Comments/explanations of unusual circumstances or other information of use to the Fee Review Committee	Contact person for any questions regarding this summary:

\*This quarterly summary is submitted in accordance with court orders and constitutes a certification that all hourly rates, staffing parameters, and expense parameters are consistent with the court’s requirements as to most favored client status. Any variance from most favored client status should be preceded by a statement to the Fee Review Committee explaining the reason for the variance and the expected duration of the variance. The Fee Review Committee reserves the right to audit any monthly statement or quarterly summary without prior notice.

6. The FRC will meet monthly, preferably during a weekday evening, by conference call or in person, when mutually convenient for all members. Members will be allowed to provide substitutes if they cannot attend. A quorum will constitute four out of the six standing members. All members of the FRC will have full voting rights; provided, however, that in the event of a vote in which the Debtor member of the FRC could determine the outcome of the vote, the Debtor member will not be allowed to vote.
7. At least five days before each monthly meeting, the FRC will distribute the spreadsheet with any issues flagged.
8. If the FRC has concerns about any rate, expense, or staffing issue, the FRC will first designate a member to raise the concern with the appropriate professional. If the FRC is not able to resolve the concern with the professional, the FRC will so advise the Court.
9. The FRC shall file quarterly Advisory Reports with the Court, raising any issues it deems relevant.
10. The FRC shall not opine on any other party in interest's objections to a fee or expense.
11. The FRC may, from time to time, alert a professional that its budget forecasts (required to be submitted to the Debtor) have raised concerns about fees, expenses, or staffing. These notifications may include, for example, an indication that very high hourly fees might affect the FRC's recommendations on enhancements upon the successful outcome of the case.
12. As plan confirmation time approaches, plan proponents may wish to include a provision delineating the continuation or termination of the FRC after plan confirmation.